IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6803 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJENDRAKUMAR CHHOTALAL DALVADI

Versus

COMPETENT AUTHORITY AND DY.COLLECTOR U.L.C.

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Appearance:

1. Special Civil Application No. 6803 of 1999

MR HARDIK C RAWAL for Petitioners No. 1-3

Mr. S.P. Sen, AGP for Respondents No. 1-3

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/11/2001

ORAL JUDGEMENT

Heard learned advocate Mr. H.C. Raval for the petitioners and Mr. S.P. Sen, the learned Asstt. Government Pleader for the respondent authorities.

In this petition, this Court has issued rule and has also granted ad.interim relief on 18th October, 2000. Today, on behalf of the respondents, affidavit in reply has been filed which is ordered to be taken on record. Copy thereof has been served to the learned advocate for the petitioner. Alongwith the learned AGP Mr. Sen, concerned Mamlatdar, U.L.C., Ahmedabad namely Mr. Arvindbhai Patel has also remained present with original papers.

Brief facts of the present petition are to the effect that the competent authority has passed an order against the petitioner herein on 21st October, 1987 which was challenged by the petitioners before the appellate authority and the appellate authority has dismissed the appeal on 28th September, 1989. Thereafter, the petitioners have challenged the order passed by the competent authority dated 21st October, 1987 as well as the order passed by the appellate authority dated 28th September, 1989 by filing special civil application No. 5270 of 1991 on 8th October, 1991 wherein order of status quo as regards possession was passed and thereafter, this court has passed order in the said petition on 4th May, 1994 wherein the orders under challenge were quashed and set aside and the matter was remanded back to the competent authority under the Urban Land (Ceiling and Regulation) Act for deciding the matter on the basis of the fresh material that may be submitted as also the material existing on the record after hearing the petitioner in accordance with law. With the aforesaid directions, the petition was disposed of and the matter was remanded back to the competent authority.

Today, during the course of hearing, learned advocate Mr. Hardik C. Raval appearing for the petitioners has submitted that through bona fide mistake, he has placed on the record the order passed by the competent authority dated 17th August, 1995 wherein no excess land has been declared by the competent authority and after looking to the orders at the time of arguments, it has revealed that the said order was passed by the competent authority in favour of Chhotalal Shankarlal and not in favour of the petitioners. He has made it clear that this was the mistake committed bonafide by him. In view of this clear statement made by Mr. Raval, the order dated 17th August, 1995 passed in favour of Chhotalal Shankarlal has not been taken into account.

Under the instructions from the concerned Mamlatdar, ULC, Ahmedabad Shri Arvindbhai Patel, learned

AGP Mr. Sen has made clear statement on the basis of the original file that after the remand of the matter back to the competent authority by order dated 4th may, 1994 passed by this Court in aforesaid petition, no order has been passed by the competent authority in so far as it relates to the petitioners but he has submitted that the land in question has been declared excess by the competent authority by order dated 21st October, 1987 and the possession of the land in question has been taken over by the State Government on 7th October, 1991. Thus, in light of these facts, the question required to be examined by this Court is as to whether the action of the State Government of taking over the possession of the land in question is legal or not.

I have heard the learned advocates for the parties. Considering the relevant provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, there is a specific section 3 in respect of the savings which is quoted as under:

"3. Savings

(1) The repeal of the Principal Act shall not affect

(a) the vesting of any vacant land under sub section (30 of section 10, possession of which has been taken over by the state Government or any person duly authorized by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub section (1) of section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State government as a condition for granting exemption under sub section (1) of section 20.

(2) where

(a) any land is deemed to have vested in the State Government under sub section (3) of section 10 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorized by the State

Government in this behalf of by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land,

then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government."

Therefore, in light of the provisions of the Repeal Act, 1999, when the Government has come forward with a case that the possession of the land in question has been taken over from the petitioners while exercising the powers under section 10(3) to 10(5) of the ULC Act, 1976, the Repeal Act would not affect the Principal Act and, therefore, the question has been examined by this Court whether the possession taken over by the State Government is legal or not.

In view of these facts, it is necessary to consider the decision of the Division Bench of this Court in case of Ramesh Shamji Raninga versus State reported in 2000(4) GLR page 2777. The Division Bench of this Court has observed as under in para 43 to 46 :

"43. We have given our thoughtful consideration to the points urged and carefully examined the ratio of the decision of the learned single Judge in the case of Maganlal Patel [supra]. On a bare reading of the provision and particularly the language used in opening part of Sec.4 "all proceedings relating to any order made or purported to be made ... shall abate" only means that such proceedings pending before any Court, tribunal or authority shall not be continued and would come to an end. The language used aforesaid can never mean that the power of the Court, tribunal or authority to examine whether the order passed or purported to have been passed under the Principal Act, while it was in operation, was valid or not, has been taken away. Any other interpretation on the language of Sec. 4 would be unconstitutional, because the Legislature by no provision can completely take away the power of judicial review. The learned single Judge, in the portion of his judgment quoted above, has taken a view that as an effect of Section 4 of the Act of 1999, even writ proceedings before the High Court would abate.

We find no ground to take a contrary view and overrule his judgment on the interpretation of Sec.4 but we consider it necessary to add a rider or explanation so as to construe the provision in a manner to make it constitutionally valid. In the impugned provision of Sec.4, the word "abate" if construed harmoniously in the light of the constitutional provisions, would mean that the proceedings under the Repealed Act would not be continued on the repeal because as a result of repeal of the Principal Act, the proceedings thereunder are rendered infructuous. In our considered opinion, provisions of Sec.4 cannot be read and construed to infer that the effect of abatement would be that even validity of actions taken under the Repealed Act and examination of its provisions for the purpose of ascertaining whether any rights and liabilities thereunder are saved, would be outside the scrutiny of Courts, tribunals or authorities. The inference of such effect of Section 4, as to take away completely power of judicial scrutiny, would be a clear negation of the legal and constitutional powers of the Courts, tribunals and authorities under the two enactments. Such interpretation would militate against the theory of basic structure of the Constitution as propounded by the Constitution Bench of the Supreme Court in the case of his His Holiness Kesavananda Bharati Sripadagalvaru & Ors. Vs. State of Kerala, AIR 1973 SC 1461 which is followed and reiterated by recognizing the power of superintendence of the High Court under Article 227 of the Constitution over Administrative Tribunals in case of L. Chandra Kumar V. Union of India & Ors., AIR 1997 SC 1125. In the case of Chandra Kumar, the Supreme Court has reiterated that the powers of judicial review under Article 226 of the High Court and Article 32 of the Supreme Court is an integral and essential feature of the Constitution, constituting part of its basic structure. The independence of judiciary is also a basic part of the Constitution. The provisions of Section 4 having an effect of abatement of pending proceedings in relation to an `order made or purported to be made'under the Repealed Act, cannot be construed to completely take away the power of the Courts, tribunals and authorities as judicial and quasi-judicial bodies to examine the validity of the order or action taken under the Repealed Act and to find out the impact of

Repealing Act on the rights and liabilities of the land owners and the State. An example will make the legal position clear. Under Repealed Act, suppose an agricultural land which is not covered by the definition of `urban land' under Section 2[o] of the Repealed Act of 1976 is clubbed with other urban land of an owner and declared excess to be deemed to have been acquired and vested in the State. Thereafter, it is taken possession of. It would be saved and retained by the State as an effect of Section 3[1] [a] of the Repealing Act of 1999. Construction as sought to be put on Sec.4 would result in abatement of case of such owner pending before any authority, Court or tribunal and would deprive the land owner from contending that he did not hold any excess urban land, such land was not governed by the Repealed Act of 1976, and was wrongly treated to have been acquired and vested in the State and its possession was wrongly taken from him by force and coercive methods. Such unjust result cannot be intended to have been provided in Sec. 4 of the Act of 1999.

44. The provisions of Sec. 4 providing for abatement of all proceedings under the Repealed Act, can only mean that on repeal of the Principal Act, all proceedings under it, to the extent they are not saved and left unaffected by the Repealing Act, would not be proceeded with as having been rendered infructuous. All such pending proceedings in which previous operation operation of the Repealed Act is challenged can never be deemed to have been abated, as the pending cases would require some adjudication and decision on the question of legal effect of the abatement provided in Sec. 4 of the ct. "Purport" is a well known word in legal usage and has many shades of meaning to be ascertained in the context of the provisions under construction. IN the present context, it cannot be construed to mean that proceedings found to be de hors of the Repealed Act, or beyond jurisdiction of the concerned authorities, who had undertaken it, although prima facie invalid, would be beyond the scope of judicial scrutiny. The use of word "purport" in Sec.4 is to be read down in the manner not to render it unconstitutional. The Legislature can never be presumed to have intended that even an order passed de hors the Act or beyond jurisdiction of the authorities

under the Repealed Act would be outside judicial scrutiny. Every law is presumed to be prospective in operation unless a contrary intention is expressed in that law. By repeal of Principal Act, its previous operation cannot be held to be beyond judicial scrutiny where such previous orders and proceedings are found to have adversely and prejudicially affected the parties. The right of land owners to challenge the validity of such proceedings cannot be intended to have been taken away by providing abatement of such proceedings. As observed by us above, "the basic structure" theory of the Constitution in KESAVANANDA BHARATI'S CASE [supra] and reiterated in L. CHANDRA KUMAR'S case [supra] does not countenance such an unconstitutional and unjust situation. An interpretation of the provisions, therefore, that such law does not deprive the power of independent judiciary has to be preferred.

45. The judgment of the learned single Judge in the case of Maganlal Patel [Supra] does not appear to us to have laid down anything contrary to the constitutional scheme. As held by the learned single Judge, the word `proceedings' as used in Sec.4 of 1999 Act may include writ proceedings in the high Court and the law can be made to render them infructuous but the power of the Constitutional Court of judicial scrutiny cannot be held to have been taken away by such Legislation. The constitutional power of High Court or Supreme Court to decide whether, on the facts and legal position in a given case, the proceedings before it would abate or not, can never be taken away by ordinary law. We also do not find any such intention of the Legislature in enacting Sec. 4 in the Act of 1999. Judicial scrutiny of actions taken and order passed under Repealed or Repealing Act would always be permissible and the Court, tribunals and authorities can decide whether on the facts and law in a given case, the proceedings before it had abated or been rendered infructuous or not. To the above extent, the provision under Section 4 have to be read down. The judgment of the learned single Judge [Supra] has to be understood and the provisions construed in a reasonable manner accordingly.

46. As a result of the discussion aforesaid

of various grounds urged before us, our conclusions are -

[1] Section 3[1][a] of the Repealing Act of 1999 is a constitutionally valid piece of legislation and the challenge made to it by the petitioner fails.

[2] The provisions in Sec. 4 of the Repealing Act of 1999 are also valid. Construed reasonably, as discussed above, they mean that the question whether, on the facts and law, in a given case, the pending proceedings before a Court, tribunal or authority under the two enactments, would abate or not, is a question open to judicial scrutiny."

The Division Bench of this Court has answered the question that the question whether on the facts and law, in a given case, pending proceedings before the Court, tribunal or the authority under the two enactments would abate or not is a question open to judicial scrutiny. Therefore, in view of these observations made by the Division Bench of this Court, looking to the facts of the present case, looking to the facts of the present case the possession has been taken by the State Government on 7.10,.1991 as per the affidavit in reply filed by the respondent No. 1. In view of the principles laid down by the Division Bench in the aforesaid decision, the question whether such such an act of taking over the possession by the State Government is legal or not is a question open for judicial scrutiny by this Court.

In respect of the present petitioner, by order dated 21.10.1987 passed by the competent authority, the competent authority has declared excess vacant land which order was challenged by the petitioner before the appellate authority which was dismissed on 28.9.1989 and, thereafter, in special civil application no. 5270 of 1991, both the orders were challenged by the petitioners before this court wherein this court has after hearing, set aside the said orders while remanding the matter back to the competent authority for fresh decision on the basis of fresh material. As per the statement made by Mr. Sen, learned AGP for the respondent authorities, the competent authority has not passed any fresh orders pursuant to the remand of the matter by this court by orders passed in special civil application no. 5270 of 1991 dated 4th May, 1994.

In light of these facts, and peculiar circumstances of the case, the view taken by this court in case of Dahyabhai Manorbhai Patel versus competent authority and the additional collector, Baroda reported in 1987 (2) 1396 is important. Paragraph 11 of the said decision is material in the facts and circumstances of the present case. It is, therefore, reproduced as under:

> 11. Such an interpretation would be both absurd and unreasonable. Therefore it has to be avoided. The only reasonable interpretation that can be given to the provisions of secs. 10[3] and 10[5] of the Act is that the vesting of the land in the Government would be subject to the result of the appeal under Sec. 33 of the Act. In cases where aggrieved party may succeed in appeal and the final order passed by the Competent Authority under Sec. 9 is set aside [ or varied or modified], the further consequential steps under Section 10 also will have to be taken by the Government so as to bring the same is conformity with the final order under Section 9 of the Act. Just as the order under Sec.9 is set aside [ or varied or modified ] by the Urban Land Appellate Tribunal similarly the subsequent steps under Sec. 10 of the Act will have to be taken by the Government and it will have either to set aside [ or vary or modify ] its earlier actions."

If the facts of the present petition are appreciated in light of the aforesaid decision, in the instant case, initial order was passed by the competent authority on 21st October, 1987 against the petitioners which was challenged before the appellate authority by the petitioners by filing appeal which came to be dismissed on 28th September, 1989. Thereafter, on the basis of the order passed by the competent authority dated 21st October, 1987, the state Government has taken over the possession on 7th October, 1991 but subsequent thereto, the petitioners challenged both the orders namely order dated 21st October, 1987 passed by the competent authority as well as the order dated 28th September, 1989 passed by the appellate authority by filing special civil application no. 5270 of 1991 wherein this Court has, by order dated 4th May, 1994, set aside both the orders while remanding the matter back to the competent authority. Learned advocate Mr. Raval appearing for the petitioners has submitted that the order passed by this Court dated 4th May, 1994 in special

civil application no. 5270 of 1991 was challenged by the State Government before the Division Bench of this Court by filing the letters patent appeal and the same was dismissed by the Division Bench of this Court. Thereafter, the competent authority has not passed any fresh order pursuant to the remand made by this court by order dated 4th May, 1994 as per the statement made by Mr. Sen on the basis of the instructions received from the concerned Dy. Mamlatdar Shri Arvindbhai Patel based on the original papers which were brought by him. The order dated 21st October, 1987 passed by the competent authority has been set aside by this Court in aforesaid petition being special civil application no. 5270 of 1991. Therefore, in view of these facts, considering the observations made by this Court in aforesaid decision, since no further steps were taken by the competent authority pursuant to the order of this court dated 4th May, 1994 passed in special civil application no. 5270 of 1991, the action of taking over the possession on the basis of the initial original order dated 21st October, 1987 which is set aside by this Court by order dated 4.5.1994 and, therefore, it is not legal. In para 9 of the memo of petition, the petitioner has made the following averments :

> "The petitioners submit that all throughout the entire proceedings, the petitioners have been in actual possession and their names are shown in the record of rights and in the revenue records. inspite of the said reply, the respondents who are not in actual possession of the land have proceeded further in pursuance of the said notices at Annexure "A" and have decided to take actual possession of the land by issuing necessary process. "

In view of these facts, when the possession taken over by the respondent is not legal, and the petitioners are in actual possession of the land in question, therefore, the land cannot be said to have vested in the Government and the petitioners are the owners of the land in question. It is more so when the respondent authority namely the competent authority has not passed any fresh order pursuant to the remand made by this court by order dated 4th May, 1994, it is required to be declared that the possession of the State Government is not legal and, therefore, present petition is required to be allowed.

In the result, present petition is allowed. It is declared that the action of the State Government of

taking over possession by panchanama dated 7th October, 1991 is not legal and valid and the land in question has not vested with the Government and the petitioners are the owners of the land in question. Therefore, considering the provisions of the Repeal Act, 1999, now the proceedings have abated in favour of the petitioners. Rule is made absolute accordingly with no order as to costs.

1.11.2001. (H.K. Rathod,J.)

Vyas